



Australian Government

Australian Public Service Commission

Angelica Pumperknickle

By email: foi+request-11123-52298187@righttoknow.org.au

Our reference: LEX 824

Dear Ms Pumperknickle

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made on **16 February 2024** for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to documents in the following terms:

'All correspondence (including emails, letters, meeting minutes, reports, or any other written or recorded communication) between Rebecca Fawcett of the Community and Public Sector Union (Rebecca.Fawcett@cpsu.org.au) and any APSC employee regarding the following topics:

- *APS-wide bargaining*
- *Common conditions*
- *Gender affirmation leave clauses*
- *Disability leave clauses*
- *Delegates' rights clauses*
- *Pay increase negotiations*

Any requests for discussions or meetings sent by the CPSU regarding the above topics, directed at the chief negotiator or other APSC employees, that occurred outside the publicly released bargaining meeting schedule.

Timeframe: Communications sent between June 2022 and February 2023.

Information Redactions

To protect the privacy of individuals, I consent to the redaction of the following information:

Names and contact details of APSC employees below the Senior Executive Service (SES) level.'

4. On 18 March 2024, the Commission wrote to advise you that a practical refusal reason existed for your FOI request under section 24AA of the FOI Act, and initiated a 'request consultation process' by issuing you a request consultation notice (**Notice**).
5. In that Notice, the Commission advised that processing the request, in its current form, would substantially and unreasonably divert the resources of the Commission from its other operations. The Commission also sought your consent to 30 day extension under section 15AA.
6. On the same day, you responded to the Notice, and revised your scope to the following terms:

"All correspondence (including emails, letters, meeting minutes, reports, or any other written or recorded communication) between Rebecca Fawcett of the Community and Public Sector Union (Rebecca.Fawcett@cpsu.org.au) and any APSC employee regarding the following topics:

- *APS-wide bargaining*
- *Common conditions*
- *Delegates' rights clauses*
- *Pay increase negotiations*

Any requests for discussions or meetings sent by the CPSU regarding the above topics, directed at the chief negotiator or other APSC employees, occurred outside the publicly released bargaining meeting schedule.

Please exclude any duplicate documents.

Timeframe: Communications sent between 1 October 2023 and 22 December 2023."

7. On 19 March 2024, you also agreed to provide the Commission an extension of 30 days to process your request.
8. On 21 March 2024, the Commission notified you that a third party consultation was being undertaken, as some documents contained personal information about third parties. In notifying you, the Commission indicated that third party consultation extends the statutory timeframe by 30 days, under subsection 15(6) of the FOI Act.
9. On the same day, you requested clarification as to why third party consultations are necessary, as you have consented to redact the staff names below the SES level, and the scope of the communications is between APSC and CPSU official, Rebecca Fawcett.
10. The Commission wrote back on 26 March 2024 to advise that the documents within the scope of the request contained personal information of third parties (that are not Commission staff), and under the section 27A of the FOI Act, the Commission decided

it was necessary to consult with the respective individual/s to provide comment on the release of relevant documents.

11. On 10 April 2024, the Commission requested that you exclude attachments to email correspondence that are draft versions.

12. On 12 April 2024, you revised the request to the following terms:

To clarify, my revised request now seeks:

"All correspondence (including emails, letters, meeting minutes, reports, or any other written or recorded communication) between Rebecca Fawcett of the Community and Public Sector Union ([email address]) and any APSC employee regarding the following topics:

- *APS-wide bargaining*
- *Common conditions (excluding draft attachments to emails)*
- *Delegates' rights clauses*
- *Pay increase negotiations*

Any requests for discussions or meetings sent by the CPSU regarding the above topics, directed at the chief negotiator or other APSC employees, occurred outside the publicly released bargaining meeting schedule.

Please exclude any duplicate documents.

Timeframe: Communications sent between 1 October 2023 and 22 December 2023.

13. A decision is due to you by **16 May 2024**.

Decision on your FOI request

5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.

6. I am satisfied that all reasonable steps have been taken to locate documents relevant to your request.

7. I have identified thirty-nine (39) documents within scope of your request.

8. The documents within scope are as follows:

- Document 1: Request for meeting between APSC and CPSU
- Document 2: Commonwealth pay outcome & concluding APS bargaining
- Document 3: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions
- Document 4: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions
- Document 5: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – job security

- Document 6: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – flexible working arrangements
- Document 7: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions - overpayments
- Document 8: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – remote localities
- Document 9: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – classifications and work level standards
- Document 10: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – classifications and work level standards
- Document 11: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – closed comprehensive agreement
- Document 12: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – consultation and consultative committees
- Document 13: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – consultation and consultative committees
- Document 14: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – delegates’ rights
- Document 15: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – delegations
- Document 16: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – incremental advancement
- Document 17: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – incremental advancement
- Document 18: Correspondence between APSC and CPSU, Rebecca Fawcett regarding draft statement of common conditions
- Document 19: Correspondence between APSC and CPSU, Rebecca Fawcett regarding correspondence to Fair Work Commission
- Document 20: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – superannuation clause
- Document 21: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – superannuation clause
- Document 22: Correspondence between APSC and CPSU, Rebecca Fawcett regarding commencement provisions and one-off payment
- Document 23: Correspondence between APSC and CPSU, Rebecca Fawcett regarding commencement provisions and one-off payment
- Document 24: Correspondence between APSC and CPSU, Rebecca Fawcett regarding one-off payment examples
- Document 25: Correspondence between APSC and CPSU, Rebecca Fawcett regarding revised position on pay
- Document 26: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – TOIL
- Document 27: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – delegations and cultural competency training
- Document 28: Correspondence between APSC and CPSU, Rebecca Fawcett regarding draft statement of common conditions
- Document 29: Correspondence between APSC and CPSU, Rebecca Fawcett regarding revised position on pay
- Document 30: Correspondence between APSC and CPSU, Rebecca Fawcett regarding

draft statement of common conditions

- Document 31: Correspondence between APSC and CPSU, Rebecca Fawcett regarding draft letter to Fair Work Commission
- Document 32: Correspondence between APSC and CPSU, Rebecca Fawcett regarding incremental advancement
- Document 33: Incremental Advancement: Guidance for Agency Lead Negotiators
- Document 34: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions - TOIL
- Document 35: Meeting request between APSC and CPSU, Rebecca Fawcett regarding salary increase clause
- Document 36: Correspondence between APSC and CPSU, Rebecca Fawcett regarding delegates rights clauses with attachment
- Document 37: CPSU Draft Clauses
- Document 38: One-off Payment Calculator
- Document 39: Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions.

9. I have decided to grant full access to Document 1, 33, 37 and 38.

10. I have decided to grant partial access to Documents 2-32, 34-36, and 39 as I consider some content in scope of your request is exempt from release under section 47F of the FOI Act. I have also removed irrelevant material under section 22 of the FOI Act.

11. **Attachment A** provides a description of the document in scope and sets out the grounds on which the document is partially exempt.

12. My reasons are set out in **Attachment B**.

Deletion of exempt matter or irrelevant matter

13. Section 22 of the FOI Act requires an agency to provide access to an edited version of a document where it is reasonably practicable to edit the document to remove exempt material or material that is irrelevant to the scope of a request.

14. Copies of requested documents have been edited to remove material that is irrelevant to the scope of your request, as you have agreed to exclude them from your request. In particular the following material was redacted, which assisted in limiting the scope of the task to one that was manageable by the Commission:

- a) correspondence that did not relate to the specified subject matters;
- b) correspondence that was not to or from the requested correspondent; and
- c) repeated material that was already included in the documents provided.

Contacts

15. If you require clarification on matters in this letter please contact the Commission's FOI team at foi@apsc.gov.au.

Review rights

16. You are entitled to seek review of this decision. Your review rights are set out at **Attachment C**.

Yours sincerely

SM

Authorised FOI decision maker, EL2 officer

15 May 2024

SCHEDULE OF DOCUMENTS

Document	Description	Exemption grounds
1	Request for meeting between APSC and CPSU	Section 22 – Irrelevant information
2	Commonwealth pay outcome & concluding APS bargaining	Section 47F – Personal Information
3	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions	Section 22 – Irrelevant information Section 47F – Personal Information
4	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions	Section 47F – Personal Information Section 22 – Irrelevant information
5	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – job security	Section 47F – Personal Information Section 22 – Irrelevant information
6	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – flexible working arrangements	Section 47F – Personal Information Section 22 – Irrelevant information
7	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions - overpayments	Section 47F – Personal Information Section 22 – Irrelevant information
8	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – remote localities	Section 47F – Personal Information Section 22 – Irrelevant information
9	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – classifications and work level standards	Section 47F – Personal Information Section 22 – Irrelevant information

10	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – classifications and work level standards	Section 47F – Personal Information Section 22 – Irrelevant information
11	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – closed comprehensive agreement	Section 47F – Personal Information Section 22 – Irrelevant information
12	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – consultation and consultative committees	Section 47F – Personal Information Section 22 – Irrelevant information
13	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – consultation and consultative committees	Section 47F – Personal Information Section 22 – Irrelevant information
14	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – delegates’ rights	Section 47F – Personal Information Section 22 – Irrelevant information
15	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – delegations	Section 47F – Personal Information Section 22 – Irrelevant information
16	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – incremental advancement	Section 47F – Personal Information Section 22 – Irrelevant information
17	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – incremental advancement	Section 47F – Personal Information Section 22 – Irrelevant information
18	Correspondence between APSC and CPSU, Rebecca Fawcett regarding draft statement of common conditions	Section 47F – Personal Information Section 22 – Irrelevant information
19	Correspondence between APSC and CPSU, Rebecca Fawcett regarding correspondence to Fair Work Commission	Section 47F – Personal Information Section 22 – Irrelevant information
20	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – superannuation clause	Section 47F – Personal Information Section 22 – Irrelevant information

21	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – superannuation clause	Section 47F – Personal Information Section 22 – Irrelevant information
22	Correspondence between APSC and CPSU, Rebecca Fawcett regarding commencement provisions and one-off payment	Section 47F – Personal Information Section 22 – Irrelevant information
23	Correspondence between APSC and CPSU, Rebecca Fawcett regarding commencement provisions and one-off payment	Section 47F – Personal Information Section 22 – Irrelevant information
24	Correspondence between APSC and CPSU, Rebecca Fawcett regarding one-off payment examples	Section 47F – Personal Information Section 22 – Irrelevant information
25	Correspondence between APSC and CPSU, Rebecca Fawcett regarding revised position on pay	Section 47F – Personal Information Section 22 – Irrelevant information
26	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – TOIL	Section 47F – Personal Information Section 22 – Irrelevant information
27	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions – delegations and cultural competency training	Section 47F – Personal Information Section 22 – Irrelevant information
28	Correspondence between APSC and CPSU, Rebecca Fawcett regarding draft statement of common conditions	Section 47F – Personal Information Section 22 – Irrelevant information
29	Correspondence between APSC and CPSU, Rebecca Fawcett regarding revised position on pay	Section 47F – Personal Information Section 22 – Irrelevant information
30	Correspondence between APSC and CPSU, Rebecca Fawcett regarding draft statement of common conditions	Section 47F – Personal Information Section 22 – Irrelevant information
31	Correspondence between APSC and CPSU, Rebecca Fawcett regarding draft letter to Fair Work Commission	Section 47F – Personal Information Section 22 – Irrelevant information
32	Correspondence between APSC and CPSU, Rebecca Fawcett regarding incremental advancement	Section 47F – Personal Information Section 22 – Irrelevant information

33	Incremental Advancement: Guidance for Agency Lead Negotiators	Full release
34	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions - TOIL	Section 47F – Personal Information Section 22 – Irrelevant information
35	Meeting request between APSC and CPSU, Rebecca Fawcett regarding salary increase clause	Section 47F – Personal Information Section 22 – Irrelevant information
36	Correspondence between APSC and CPSU, Rebecca Fawcett regarding delegates rights clauses with attachment	Section 47F – Personal Information Section 22 – Irrelevant information
37	CPSU Draft Clauses	Full release
38	One-off Payment Calculator	Full release
39	Correspondence between APSC and CPSU, Rebecca Fawcett regarding statement of common conditions	Section 47F – Personal Information

ATTACHMENT B

Reasons for decision

1. In making my decision I have had regard to:
 - a) the terms of your request;
 - b) the content of the documents;
 - c) the *Public Service Act 1999* (PS Act);
 - d) the FOI Act; and
 - e) the Freedom of Information Guidelines (**FOI Guidelines**) issued by the Australian Information Commissioner.

Exemptions

Section 47F – Personal privacy

2. Section 47F of the FOI Act provides that a document is conditionally exempt if it would involve the unreasonable disclosure of personal information about any person.
3. Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether:
 - a) the information or opinion is true or not; and
 - b) the information or opinion is recorded in a material form or not.
4. I consider that Documents 2-32, 34-36 and 39 contains such matter; specifically, the names and contact information of APS staff, contact details of SES staff that are not publicly available, and name and contact details of third parties.
5. I have had regard to the matters I must consider under subsection 47F(2) of the FOI Act in determining whether the disclosure of the personal information would involve the unreasonable disclosure of personal information.
6. In considering what is unreasonable, the Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at [51] stated:

...whether a disclosure is 'unreasonable' requires... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party...

7. Other factors to be considered include the nature, age and current relevance of the information, any opposition to disclosure held by the person that the personal information relates to, and the circumstances of an agency's collection and use of the information ('FG' and *National Archives of Australia* [2015] AICmr 26 at [47]).

8. I note that in *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 (9 November 2020), Deputy President S A Forgie found (at [130]):

'An individual may include his or her direct telephone number in correspondence directed to other persons. Unless published on an agency's website or made public in some other way, such as on a pamphlet or report available to the public, I consider that disclosure of an individual's telephone number in his or her place of employment is unreasonable. Its disclosure will provide an avenue by which others may choose to express their displeasure with the individual or with that for which he or she is responsible but its disclosure does not make any positive contribution to increasing public participation in Government processes or in increasing scrutiny, discussion, comment and review of the Government's activities.'

9. In relation to the question of whether disclosure would be unreasonable, the FOI Guidelines provide, at paragraph 6.144:

'For example, in Colakovski v Australian Telecommunications Corp, Heerey J considered that '... if the information disclosure were of no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed ... disclosure would be unreasonable'. This illustrates how the object of the FOI Act of promoting transparency in government processes and activities needs to be balanced with the purpose of s 47F to protect personal privacy, although care is needed to ensure that an FOI applicant is not expected to explain their reason for access to contrary to s 11(2).'

10. Relevant to personal information of certain public servants, under the FOI Act there is no presumption that agencies and ministers should start from the position that the inclusion of the full names of staff in documents increases transparency and the objects of the FOI Act: *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 at [83].

11. I have identified the following factors that, in my view, do not support the release of this personal information under section 47F of the FOI Act:

- the individuals' personal information, in particular their name, will identify them;
- the personal information is unique and relates specifically to the individuals, and is generally not well known or publicly available; the FOI Act does not control or restrict the subsequent use or dissemination of information released under the FOI Act;
- the disclosure of this information will not advance scrutiny of any decisions falling

- within scope of your FOI request;
- the disclosure of this information could expose concerned individuals to unsolicited and inappropriate approaches by external parties;
- release of the individuals' personal information may cause stress for them or other detriment; and
- disclosure would prejudice the individuals' right to privacy.

12. I have therefore decided to the extent that Documents 2-32, 34-36 and 39 includes personal information of APS staff, and third parties, those parts are conditionally exempt from disclosure under section 47F of the FOI Act because disclosure would involve the unreasonable disclosure of their personal information.

Section 11A – Public interest test

13. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless access to the document would, on balance, be contrary to the public interest.

14. I have considered the public interest exemption factors in favour of disclosure at subsection 11B(3) of the FOI Act, including the extent to which access to the documents would promote the objects of the FOI Act and inform debate on a matter of public importance.

15. I have identified the following factors as weighing against disclosure:

- a) disclosure of individuals' personal information will not advance any scrutiny of any decisions falling within the scope of your FOI request;
- b) disclosure would prejudice individuals' right to privacy;
- c) disclosure could lead to unwarranted approaches to individuals which would adversely impact their ability to perform their role and functions, noting that general enquiry phone numbers and email addresses are available;

16. Subsection 11B(4) of the FOI Act lists factors that are irrelevant to determining whether access would be in the public interest. I have not considered these factors.

17. On balance, I find disclosure of some parts of Documents 2-32, 34-36 and 39 would be contrary to the public interest. To the extent that the material contained in Document 2-32, 34-36 and 39 is conditionally exempt under section 47F, those parts are exempt from disclosure.

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au
Post: The FOI Officer
Australian Public Service Commission
B Block, Treasury Building
GPO Box 3176
Parkes Place West
PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**: Online: www.oaic.gov.au

Post: Australian Information
Commissioner GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au